

## APPEAL NO. 93353

On March 31, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as the hearing officer. The hearing was held under the provisions of the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq.* (Vernon Supp. 1993) (1989 Act). The hearing officer determined that the respondent (claimant herein) suffered a compensable injury to her right knee while working for her employer, on (date of injury), and further determined that the claimant has had disability since May 20, 1992. The appellant (carrier herein) was ordered to pay medical and income benefits in accordance with the hearing officer's decision and order and the provisions of the 1989 Act. The carrier contends that the hearing officer erred in finding that the claimant suffered a compensable injury and in finding that she had disability. The carrier requests that we reverse the hearing officer's decision.

## DECISION

We find that the appeal in this matter was not filed within the time limits required by Article 8308-6.41(a) and the decision of the hearing officer is the final administrative decision in this case. Article 8308-6.34(h).

The carrier apparently concedes the appeal was not timely filed by stating:

The Decision and Order rendered in this case was not forwarded to the attorney for Carrier. Therefore, the Carrier and the attorney for Carrier were denied the opportunity to discuss whether an appeal should be filed in the is (sic) matter, and hence, a timely appeal was not filed by the carrier.

In essence, the carrier asserts that the time for filing a request for review does not, or should not, begin until the attorney for the carrier is served a copy of the hearing officer's decision and has had an opportunity to discuss an appeal with the carrier. We find no merit in the carrier's assertion because we have previously held that the operative date for determining the timeliness of an appeal is the date the party, not his attorney, received the hearing officer's decision. Texas Workers' Compensation Commission Appeal No. 92219, decided July 15, 1992.

Article 8308-6.41(a) provides that a party that desires to appeal the decision of the hearing officer shall file a written appeal with the Appeals Panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division of hearings. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(b) provides that, unless otherwise specified by rule, all notices and communications to insurance carriers will be sent to the carrier's Austin representative as provided in Rule 156.1. Rule 156.1(a) provides that each insurance carrier shall designate a person in Austin, Texas, as its representative to the Commission, to act as agent for receiving notice from the Commission, and Rule 156.1(c)

provides that any notice from the Commission sent to the designated representative's Austin address is notice from the Commission to the insurance carrier. The hearing officer's decision was mailed to the carrier's Austin representative at the representative's Austin address on April 15, 1993. The request for review does not state when the carrier received the hearing officer's decision. Accordingly, under Rule 102.5(h) the carrier is deemed to have received the decision on April 20, 1993, which was five days after the date mailed. A request for review is presumed to be timely filed if it is mailed on or before the 15th day after the date of receipt of the hearing officer's decision, and it is received by the Commission not later than the 20th day after the date of receipt of the decision. Rule 143.3(c). The 15th day after the deemed date of receipt was Wednesday, May 5, 1993. The carrier's request for review is dated May 7, 1993, and the certificate of service showing service on the claimant by mail is dated May 7, 1993. The carrier's request for review was received by the Commission on May 7, 1993. We conclude that the carrier's request for review was not timely filed.

We observe that in Texas Workers' Compensation Commission Advisory 92-07, dated November 3, 1992, all carrier representatives were advised:

Beginning November 30, 1992, all documents and notices required to be provided by the Texas Workers' Compensation Commission to insurance companies that provide workers' compensation coverage will be placed in the Carrier's Austin Commission Representative's Box on the first floor in the Central Office.

This includes, but is not necessarily limited to, documents such as Set Notices for Benefit Review Conferences and Contested Case Hearings and transmittal letters containing Benefit Review Conference Reports, Contested Case Hearing Decisions, and Appeals Panel Decisions. No additional copies of such documents will be mailed to Carriers' Representatives who have attended such proceedings.

Article 8308-6.34(h) provides that the decision of the hearing officer regarding benefits is final in the absence of a timely appeal by a party. Since the carrier's appeal was not timely filed, the hearing officer's decision is final and we have no jurisdiction to review the hearing officer's decision.

---

Robert W. Potts  
Appeals Judge

CONCUR:

---

Stark O. Sanders, Jr.  
Chief Appeals Judge

---

Thomas A. Knapp  
Appeals Judge